Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Grande Communications, Inc.	)	WC Docket No. 05-283
	)	
Petition for Declaratory Ruling	)	DA 05-2680
Regarding	)	
Self-Certification of IP-Originated VoIP	)	
Traffic	)	
	)	
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REPLY COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

While there is no disputing that the intercarrier compensation issue is being actively debated at the federal level, the Commission has not yet reached a decision on the nature of issues that are the subject of Grande's petition. For ILECs, local interconnection arrangements are established with concomitant compensation obligations for traffic exchanged via ILEC facilities. While relief or exemption from access charges continues to be at the top of some carrier's wish lists, the reality is that such a decision has not been rendered.

While the Commission stopped short of ruling on intercarrier compensation issues in the Vonage Order, the logical conclusion that flows from the Order is that, because IP-PSTN services are jurisdictionally interstate, interstate access charges should apply to those services. Therefore, until the Commission changes its existing rules governing intercarrier compensation, access charges apply to all interexchange traffic terminating on the PSTN.

The flawed self-certification proposed by Grande would likely prove to be an inviting vehicle for such carriers to engage in even greater access charge avoidance. Simply stated, Grande's clever ploy at self-certification should be rejected with prejudice.

The Commission should reject the semantics offered by Broadwing Communications and Level 3, who reiterate the tired mantra of "*hinder(ing) technological innovation and market competition*." These carriers seek to build their business plans on avoiding lawful access charges. The Commission should require this class of carrier to follow the rules, just as it expects rural wireline carriers to do.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, access charge reform, and strategic planning for communications carriers in rural America. The purpose of these reply comments is to respond to the Public Notice released by the Commission on October 12, 2005 in the above-captioned docket.

In its petition, Grande Communications, Inc.(Grande) seeks a ruling that when an access customer certifies to a LEC that its traffic is "enhanced services, VoIP-originated traffic" that the LEC may rely on that certification and treat that traffic as local for routing and intercarrier compensation

purposes. The desired end result of Grande's untimely petition is for terminating LECs receiving traffic over local interconnection trunks to be required to treat such traffic as local traffic for intercarrier compensation purposes and to create a situation in which LECs "may not assess access charges for such certified traffic."[1]

The petition cleverly focuses on what is portrayed as a non-controversial procedural issue of what type of documentation a carrier should supply to be exempt from access charges. We encourage the Commission to reject the requested petition, which is accurately characterized as "out of sequence and it is plainly a backdoor attempt. to obtain the same relief from payment of access charges."[2] In a similar vein, AT&T observes correctly at page 14 that Grande "*is effectively asking the Commission to re-write its access charge rules in a declaratory ruling proceeding*."

THE COMMISSION SHOULD REJECT THE PETITION AS PREMATURE AND UNWARRANTED

While there is no disputing that the intercarrier compensation issue is being actively debated at the federal level, the Commission has not yet reached a decision on the nature of issues that are the subject of Grande's petition. For ILECs, local interconnection arrangements are established with concomitant compensation obligations for traffic exchanged via ILEC facilities. While relief or exemption from access charges continues to be at the

[1] Grande Petition at 9 and 25.
[2] Alltel comments at 3.

top of some carrier's wish lists, the reality is that such a decision has not been rendered.[3]

The disingenuous nature of the Grande petition is illustrated in the comments of Alltel, which states in part at page 9 of their filing:

> *Furthermore, self-certification is irrelevant because the interconnection agreements between Grande and the ILECs typically contain provisions to determine the jurisdiction of traffic and the compensation obligations associated with such traffic. Grande should be required to abide by the terms and conditions, including intercarrier compensation obligations, of interconnection agreements and lawful tariffs from which Grande purchases ILEC termination services.*

In its comment filing at page 12, AT&T highlights the "*discrepancies between the assertions in Grande's petition and the actual text of the self-certifications used by Grande in the marketplace. . . . [t]he flawed self-certification proposed by Grande would likely prove to be an inviting vehicle for such carriers to engage in even greater access charge avoidance…*" Continuing this theme at page 13, AT&T further opines that:

> *Indeed, Grande's "don't ask don't tell" proposal would give it a perverse incentive to stick its head in the sand precisely to avoid coming into possession of any information that might call into question the veracity of its customer self-certification. Worse still, such self-interested indolence would directly benefit Grande at the expense of a terminating LEC, who would be forced to rely on a self-certification from a party (Grande's customer) with whom the terminating LEC has no direct relationship and thus no direct means to evaluate the*

[3] We concur with SBC's opposition filing in the Level 3 Forbearance docket (WCD No. 03-266) that stated in part: *"[t]he ESP Exemption does not, and was never intended to, exempt the VoIP provider from paying terminating access charges when the call originates in IP, is subsequently converted to circuit-switched format and is delivered to the PSTN to terminate to a LEC's end-user customer as a normal, POTS voice telephone call."* [filed March, 2004 at 10].

> *legitimacy of the party's self-certification. The Commission should reject Grande's self-serving "actual knowledge" standard by denying Grande's petition.*

Bell South continues this argument, in stating at page 2 of its filing that:

> *Mere reliance upon Grande's customer self-certifications that traffic is enhanced service traffic is insufficient to prevent unlawful access charge avoidance to downstream terminating LECs under existing rules. . . .Grande provides no support for its contention that the traffic at issue is exempt from the payment of access charges.*

DENYNG THE REQUESTED RELIEF WOULD RECONCILE WITH COURT PRECEDENT

There is both Supreme Court precedent and a recent appellate court decision that compel the Commission to reject the Grande petition.

In its early Access Charge orders, this Commission established access charge rates that enabled carriers to recover costs that had been assigned by separations rules to the interstate jurisdiction. State regulators followed suit. These actions were consistent with the Supreme Court decision in *Smith v. Illinois Bell*[4] that permits carriers to recover the costs of their facilities that are assigned to the interstate and intrastate jurisdictions. Despite all the clever ploys of certain carriers, *Smith* remains the law of the land.

In one of the 1997 Eighth Circuit cases (No. 97-2618), the Court upheld the ESP exemption by recognizing that ISPs did not utilize LEC facilities in the same manner as customers who are assessed per-minute interstate access charges. In its brief[5] in this matter, this Commission stated that the ESP exemption is not applicable in the case of a service provider that "uses the LEC facilities as an element in an end-to-end long distance call."

From the data presented in this instant case, it appears that the calls that are the subject of this Grande petition are voice calls which do utilize LEC facilities in the same manner as other customers who are assessed interstate access charges. Accordingly, the Commission should reject the Grande petition with prejudice.

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[4] *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 149, 160 (1930).
[5] Federal Communications Commission 8th Circuit Brief, Case No. 97-2618, December 16, 1997, at 76.

THE COMMISSION HAS PRECEDENT THAT DIFFERS FROM THE PETITION REQUEST

As a policy matter, this Commission has previously stated that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP-network, or on a cable network."[6] Therefore, until the Commission changes its existing rules governing intercarrier compensation, access charges apply to all interexchange traffic terminating on the PSTN.[7] Simply stated, Grande's clever ploy at self-certification should be considered moot.[8]

In its recent *Vonage Order*, this Commission recognized that the IP-PSTN services offered by Vonage and other service providers are inherently interstate in nature. We concur with the conclusion that AT&T reached in their comments in this proceeding at page 6, where AT&T stated in part that:

> *While the Commission stopped short of ruling on intercarrier compensation issues in the Vonage Order, the logical conclusion that flows from the Order is that, because IP-PSTN services are*

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[6] *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863, released March 10, 2004, at paragraph 61.

[7] As Bell South states at page 14: "*There is no legal or policy justification for a government mandate that allows some carriers to avoid access charges because of the technology they use*."

[8] The Commission should reject the semantics offered by Broadwing Communications and Level 3, who reiterate the tired mantra at iv of "*hinder(ing) technological innovation and market competition*." These carriers seek to build their business plans on avoiding lawful access charges. The Commission should require this class of carrier to follow the rules, just as it expects rural wireline carriers to do.

> *jurisdictionally interstate, interstate access charges should apply to those services*. (footnote omitted)

Respectfully submitted

Via ECFS on 1/11/06

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